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IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. 868

E. OTWAY DENNY, et al

versus

EARL BENJAMIN BUSH, et al

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

JURISDICTIONAL STATEMENT

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

JURISDICTIONAL STATEMENT

Appellants, Emile A. Wagner, Jr., F. Otway Denny, Edward J. Penedo and John Singreen, members of the Orleans Parish School Board created by Act No. 4 of the Third Extraordinary Session of the Louisiana Legislature for 1960, and designated in said Act to serve as original members of said Board, appeal from the judgment of the United States District Court for the Eastern District of Louisiana, entered on March 3, 1961, declaring unconstitutional the aforesaid Act of the Legislature of Louisiana and enjoining appellants from carrying out any of the provisions of said statute.

OPINION BELOW

The United States District Court for the Eastern District of Louisiana sitting as a Three Judge Court on March

3, 1961, issued its opinion holding the aforesaid Act No. 4 of the Third Extraordinary Session of the Louisiana Legislature for 1960 unconstitutional, and on the same date issued a Temporary Injunction restraining appellants and others from enforcing or seeking to enforce by any means the provisions of Act No. 4 of the Third Extraordinary Session of the Louisiana Legislature for 1960. As of this date, the opinion of the aforesaid District Court and the Temporary Injunction issued by it are unreported. Copy of the said opinion and of the Temporary Injunction appear on Pages 16 & 33 Appendix A.

Other opinions heretofore rendered herein are reported in: 138 F. Supp. 336, Aff'd. 242 F. 2d 156, Cert. Den. 354 US 121; 163 F. Supp. 701, Aff'd. 268 F. 2d 78; 187 F. Supp. 42.

JURISDICTION

The jurisdiction of the Supreme Court to review by direct appeal this decision of the Three Judge District Court is conferred by Title 28, US Code, Section 1253.

Notice of appeal from the Judgment of the District Court which was entered on March 3, 1961, was filed in that Court on March 22, 1961.

QUESTIONS PRESENTED

The following questions are presented by this appeal:

A. The Constitutionality of Act No. 4 of the Third Extraordinary Session of the Louisiana Legislature for 1960.

B. The jurisdiction of the District Court to issue a Preliminary Injunction against the members of the Orleans Parish School Board created by said Act No. 4.

C. The validity of the order of the District Court granting to the United States, as Amicus Curiae, the right to initiate proceedings herein for injunction and the right of the United States to so act.

STATUTE INVOLVED

The statute directly involved is Act No. 4 of the Third Extraordinary Session of the Louisiana Legislature for 1960. The aforesaid Act is set forth in full in Appendix B hereof.

STATEMENT

This suit was originally brought in 1952 by numerous Negro students of the Orleans Parish Schools appearing through their "next friend", seeking equal but separate facilities for students of the white and Negro races. Thereafter, following this Court's decision in Brown vs. Topeka, the complaint was amended to pray for full integration of all New Orleans public schools.

On February 15, 1956, the United States District Court for the Eastern District of Louisiana, directed the Orleans Parish School Board to begin desegregation of the public schools of New Orleans with all deliberate speed. (138 F. Supp. 366, Aff'd 242 F. 2d 156 Cert. Den. 354 US 921) Thereafter, the District Court directed the aforesaid School

Board to file a plan of desegregation on or before May 16, 1960. On said date, the Board filed with the Court a statement declaring its inability to submit a plan of desegregation because of a State Statute reserving to the Legislature alone the right to classify schools as white, Negro or integrated. On the same date, the District Court filed its own plan requiring desegregation of the Orleans Parish Schools beginning with the first grade in September, 1960. The District Court on motion of the Orleans Parish School Board, extended the date for the desegregation of the schools to November 14, 1960, and authorized aforesaid Board to desegregate said schools in accordance with the provisions of the pupil placement plan enacted by the Legislature of Louisiana. (La. Revised Statutes, Title 17, Sec. 101 et seq.)

Thereafter, the Legislature of the State of Louisiana met in its First Extra Session of 1960, and passed Act No. 25 of said session which was subsequently signed by the Governor, and became law, which repealed that section of the Louisiana Revised Statutes creating the Orleans Parish School. In the Second Extraordinary Session of 1960 the Louisiana Legislature passed Act No. 2 of said session which was subsequently signed by the Governor and became law, creating "a School Board of the Parish of Orleans" to consist of five members to be elected at the next congressional election. The interim members serving from the time the act became law until the next congressional election were to be appointed by the Governor of the State of Louisiana. In this Act, the School Board is granted limited powers, financial in nature, such as to borrowing, receiving and disbursing money, etc. All other powers relative to the public schools of New Orleans were specifically reserved to the Legislature.

Thereafter, the District Court held Act No. 25 of the First Extraordinary Session of the Legislature and Act No. 2 of the Second Extraordinary Session unconstitutional, and issued a preliminary injunction restraining the Governor of the State of Louisiana, the Attorney General, the Legislature of the State of Louisiana and numerous other State Officials from enforcing any of the provisions of said Acts. Appeal from this order of the District Court has heretofore been filed herein on behalf of the Legislature and the other State Officials so enjoined, and is presently pending before this Court.

Prior to said appeal to this Court in a taxpayers suit brought in the State Courts of Louisiana wherein an injunction was sought to prevent the Governor of the State from enforcing the provisions of Act No. 2 of the second Extraordinary Session of 1960, the Supreme Court of the State of Louisiana, reviewing the issuance of a temporary restraining order issued by the Nineteenth Judicial District Court For The Parish Of East Baton Rouge, State of Louisiana, held said act to be constitutional. (George L. Singelmann, et al vs. Jimmie H. Davis, et al. See copy of said decision on Page 36 Appendix A hereof.)

In its Third Extraordinary Session of 1960, the Legislature of Louisiana enacted Act No. 4, which is a basis of this action. This Act created a new School Board for the Parish of Orleans, consisting of five members, and names appellants herein to serve as members of said Board until the next congressional election.

On December 2, 1960, the District Court entered an ex parte order requesting and authorizing the United States

to appear in these proceedings as Amicus Curiae, "by and through the Attorney General of the United States and the United States Attorney for the Eastern District of Louisiana, to accord the Court the benefit of their views and recommendations with the right to submit to the Court pleadings, evidence, arguments and briefs, and to initiate such further proceedings as may be appropriate in order to maintain and preserve the due administration of justice and the integrity of the judicial processes of the United States." (See page 47 App. A)

Pursuant to this order of the District Court, the United States appearing through the United States Attorney, on January 13, 1961, filed a petition on behalf of the United States, Amicus Curiae, to restrain the enforcement of House Bill No. 16, now Act No. 4 of the Third Extraordinary Session of the Louisiana Legislature for 1960. This petition was brought against the Governor of the State of Louisiana, Attorney General of the State of Louisiana, the Legislature of the State of Louisiana and numerous other State Officials, including appellants named as members of the New Orleans Parish School Board.

On February 10, 1961, a hearing was had on the motion for Preliminary Injunction by the United States, Amicus Curiae, and thereafter on March 3, 1961, the District Court issued its opinion holding the aforesaid Act unconstitutional. (See Page 48 Appendix A) and issued a Preliminary Injunction prohibiting appellants herein "from assuming office or exercising any function as members of the said School Board for the Parish of Orleans" under provisions of said Act No. 4. It is from this opinion of the District Court

and from the Preliminary Injunction issued by said District Court that this appeal is taken.

THE QUESTIONS RAISED HEREIN ARE SUBSTANTIAL

The District Court did not have jurisdiction to grant the relief prayed for in the aforesaid petition of the United States, Amicus Curiae, as this matter does not involve a federal question and there is no diversity of citizenship. It has repeatedly been held that a state keeping within the confines of its own constitution may create or dissolve its Boards as in its wisdom it may see fit. (Higginbotham v. Baton Rouge, 306 US 535, 83 L. Ed. 968, 59 S. Ct. 705 etc.; See, also, Butler vs. Pennsylvania, 10 How. 402, 13 L. Ed. 472; Crenshaw v. United States, 134 U.S. 99, 106, 10 S. Ct. 431 433, 33 L. Ed. 825; Phelps v. Board of Education, 300 U.S. 319, 322, 57 S. Ct. 483, 484, 81 L. Ed. 674; Dodge v. Board of Education, 302 U.S. 74, 78, 79, 58 S. Ct. 98, 100, 82 L. Ed. 57.)

Article 12, Section 1 of the Louisiana Constitution of 1921, provides in part as follows:

> "The Legislature shall have full authority to make provisions for the education of the school children of this state and/or for an educational system which shall include all public schools and all institutions of learning operated by State Agencies."

The legislature is further authorized by the State Constitution to create Parish School Boards, Article 12, Section 10 of the said Constitution, provides in part, that:

> "The Legislature shall provide for the creation and election of parish school boards * * * *"

It is thus apparent that the Legislature of the State of Louisiana in Act No. 4 in its Third Extraordinary Session was well within the confines of the Constitution of the State of Louisiana, and acted in accordance with the authority given it by said Constitution. Moreover, while we recognize that the judgment of the Supreme Court of Louisiana with respect to the federal constitutionality of a State Statute is not controlling, nevertheless when a State Supreme Court unanimously holds, as it did in this instance, a state act constitutional, such decision should be given careful consideration by this Court. In holding Act No. 25 of the First Extraordinary Session of 1960 and Act No. 2 of the Second Extraordinary Session of 1960 constitutional, Judge Hamlin speaking for the Supreme Court of Louisiana said:

> "The actions of the United States District Court took place before the persons appointed or to be appointed by the Governor as Members of the Orleans Parish School Board had begun to function or perform any acts . . . Under these circumstances, if Act No. 25 is constitutional on its face, as it is, and is a measure adopted, as stated by the United States District Court. "In an area peculiarly reserved for exclusive state action," how does the mere statement that it was "part and parcel of the original segregation package" justify in law a holding of unconstitutionality?"

and again,

> "We conclude that Acts Nos. 2 and 25, supra, are valid and constitutional enactments on their face."

(See copy of said decision on Page 44 Appendix A hereof.)

In the aforesaid decision the Supreme Court of Louisiana unanimously held Act No. 25 abolishing the Orleans Parish School Board and Act No. 2 creating a new School Board for the Parish of Orleans constitutional. The question presented herein as to the constitutionality of Act No. 4 of the Third Extraordinary Session is identical with the question passed upon by the Supreme Court in the aforesaid decision. This State Statute, which the District Court held unconstitutional, created a School Board for the Parish of Orleans consisting of five members and names appellants herein to serve as members of said Board until the next congressional election. The Act has several other provisions with respect to the duties and authority of said Board which are not pertinent to the issuance under discussion.

This Act is on its face constitutional. The School Board created by this Act and its members are just as much bound by the injunction to desegregate Orleans Public Schools originally issued in this proceeding by the District Court and its implementations as were the members of the original Board. There is not the slightest evidence that the Board of which appellants are members was contrived to circumvent the orders of the District Court. Should any of appellants not conform with the District Court's decrees, that Court has at its disposal ample sanctions to require enforcement in any instance. The Federal Courts have no interest what-

soever in what individuals compromise the Orleans Parish School Board as that is a matter solely within the confines of the jurisdiction of the State of Louisiana. The Federal Court's only interest is that whichever Board governs the Orleans Parish School that such Board would be amenable to the decrees of the District Court. Obviously, appellants as successors to the original Board are subject to all the decrees issued in this matter by the District Court. It is inconceivable and, in fact, impossible that the Board created by Act No. 4 of the Third Extraordinary Session will "impede, obstruct and interfere with the orders of the District Court" as contended by the United States in its petition. Any such attempt by members of this Board would immediately subject them to contempt proceedings in the District Court. To be unconstitutional even under the District Court's "part of a pattern theory", a State Statute must present a possibility of providing a means of unlawfully interfering with that Court's decrees. The present act presents no such possibility, and it is clearly constitutional in an area which the District Court has held to be "peculiarly reserved for exclusive state action" and in which this Court has held:

> "It was not intended by the Fourteenth Amendment and the Civil Rights Acts that all matters formerly within the exclusive cognizance of the states should become matters of national concern."

(Snowden vs. Hughes, 321 US 1, 88 L. Ed. 497)

It is, therefore, submitted that the United States District Court did not have jurisdiction to review Act No. 4 of the Third Extraordinary Session of the Louisiana Legislature

for 1960, as said Act deals purely with matters of local concern and that said Court erred in holding said Act unconstitutional.

Another error of the District Court was its authorization to the United States Attorney to appear as Amicus Curiae in this matter, and to file a petition for the preliminary injunction issued herein.

The United States Attorney does not have the capacity to file the aforesaid petition.

The position of the United States Attorney was created by the Congress of the United States. (28 U.S.C.A. 501) The duties of that position were also defined by the Congress of the United States. (28 U.S.C.A. 507 and numerous special acts)

Neither the basic act nor any of the numerous special acts, confer upon a United States Attorney the right to file a petition on behalf of the United States praying for injunctive relief in a Civil Rights case between private litigants. As a matter of fact, as far as we can find, the only precedent of this procedure is in the case of Faubus vs. United States, (254 F. 2d. 797) which case was known in the District Court as Aaron vs. Cooper, (143 F. Supp. 855) Faubus having been made a defendant in the case after the original District Court decision. In that case, the District Court requested the United States Attorney to investigate to determine the responsibility for interference with the Court's previous orders. After receiving the report of the United States Attorney the court requested and authorized the Attorney General of the United States and the United

States Attorney to appear in that proceeding as Amicus Curiae. The United States Attorney filed petition for preliminary and final injunction. The District Court's order allowing him to do so was generally sustained by the Court of Appeals For The Eighth Circuit in the Faubus case cited above. However, in that case, the Court of Appeals stated that whether or not the United States Attorney had the right to file the petition for injunction, the petitioners had joined in the motion, thus curing any possible defect. In the instant case, petitioners did not join with the United States Attorney in his petition for injunction.

Congress has specifically refused the United States Attorneys the right exercised by the United States Attorney herein.

The Civil Rights Bill introduced in Congress in 1957, contained the following provision in Section III of said Bill.

> "Fourth. Whenever any persons have engaged or there are reasonable grounds to believe that any persons are about to engage in any acts or practices which would give rise to a cause of action pursuant to paragraphs First, Second or Third, the Attorney General may institute for the United States, or in the name of the United States, a civil action or other proper proceeding for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order. In any proceeding hereunder the United States shall be liable for costs the same as a private person.

"Fifth. The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this section and shall exercise the same without regard to whether the party aggrieved shall have exhausted any administrative or other remedies that may be provided by law."

(See copy of pages 9 and 10 or original Bill H.R. 6127 85th Congress App. B.)

Thereafter there was introduced in Congress an amendment known as the Anderson-Aiken-Case Amendment to delete the above quoted sections from the Bill. Senator Lyndon Johnson, now Vice-President of the United States, in addressing the Senate in support of the amendment to delete the above quoted Sections of the Bill, stated that the Attorney General of the United States had recommended that said section should be studied by a commission before its passage. Senator Johnson concluded his argument by stating, "Mr. President, I hope the Senate in its wisdom today will strike from the measure part III, which never should have been in it." A vote was taken by the Senate on the amendment. The amendment was passed by a vote of 52 to 38, and the sections quoted above were deleted from the bill. (See copy of pages 11377 and 11378 of the Congressional Record of 1957 App B.)

It is thus apparent, that the Congress of the United States which created the office of United States Attorney, and which through the years has defined the duties and authority of said office, did not intend for the United States Attorney to have the authority granted him by the Court

in this case. and deliberately withheld that authority from the United States Attorney.

In view of the fact that Congress has clearly shown its intention that the United States Attorney should not have the right to intervene in a private action, it would appear that the Court in this case and in the Faubus case, exceeded its authority in granting the United States Attorney a right denied him by the Congress of the United States.

It is, therefore, respectfully submitted that the United States Attorney is without authority to file the petition for a preliminary and final injunction and the motion for a preliminary injunction, and that, therefore, both the petition and the motion should have been dismissed by the District Court.

It is accordingly submitted that:

1. The District Court did not have jurisdiction to review said Act No. 4;

2. It erred in holding said Act unconstitutional;

3. The District Court had no authority to direct and request the United States Attorney to appear as Amicus Curiae, and that the United States Attorney was without authority to file a petition for a preliminary injunction.

Respectfully submitted,

GERARD A. RAULT,
Attorney for Emile A. Wagner, Jr., F. Otway Denny, Edward J. Renedo and John Singreen

CERTIFICATE

I, Gerard A. Rault, attorney for Defendants-Appellants herein, and a member of the Bar of the Supreme Court of the United States, do hereby certify that I have this day served copies of the foregoing Jurisdictional Statement on all parties in this cause, by mailing a copy in a duly addressed envelope, with postage paid to counsel of record for said parties.

This 2nd day of March, 1961.

Of Counsel for Defendants-Appellants

APPENDIX A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

Earl Benjamin Bush, et al.,
Plaintiffs,

versus
No. 3630
Civil Action

Orleans Parish School Board, et al.,
Defendants.

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RIVES, Circuit Judge, and CHRISTENBERRY and WRIGHT, District Judges:

Once again,[1] irresponsible conduct on the part of some

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[1]The Orleans Parish school desegregation controversy has been in the federal courts for more than eight years.

In 1954, the state adopted a constitutional amendment and two segregation statutes. The amendment and Act 555 purported to re-establish the existing state law requiring segregated schools. Act 556 provided for assignment of pupils by the school superintendent. On February 15, 1956, this court held that both the amendment and the two statutes were invalid. The court issued a decree enjoining the School Board, "its agents, its servants, its employees, their successors in office, and those in concert with them who shall receive notice of this order" from requiring and permitting segregation in the New Orleans schools. *Bush* v. *Orleans Parish School Board*, 138 F. Supp. 337, aff'd, 242 F. 2d 156, cert. denied, 354 U.S. 921.

Not only was there no compliance with that order, but immediately thereafter the Legislature produced a new package of laws, in particular Act 319 (1956) which purported to "freeze" the existing racial status of public schools in Orleans Parish and to reserve to the Legislature the power of racial reclassification of schools. On July 1, 1958, this court refused to accept the School Board's contention that Act 319 had relieved the Board of its responsibility to obey the desegregation order. In the words of the court, "any legal artifice, however cleverly contrived, which would circumvent this ruling [of the Supreme Court, in *Brown* v. *Board of Education*, 347 U.S. 483] and others

(Continued)

predicated on it, is unconstitutional on its face. Such an artifice is the statute in suit." *Bush* v. *Orleans Parish School Board*, 163 F. Supp. 701, aff'd, 268 F. 2d 78. See also, *Lane* v. *Wilson*, 307 U.S. 268.

Nevertheless, the Legislature continued to contrive circumventive artifices.

In 1958 a third group of segregation laws was enacted, including Act 256, which empowered the Governor to close any school under court order to desegregate, as well as any other school in the system. In the first court test of this law it was struck down as unconstitutional by this court on August 27, 1960. *Bush* v. *Orleans Parish School Board*, 187 F Supp. 42.

On July 15, 1959, the court ordered the New Orleans School Board to present a plan for desegregation, *Bush* v. *Orleans Parish School Board*, No. 3630, but there was no compliance. Therefore, on May 16, 1960, the court itself formulated a plan and ordered desegregation to begin with the first grade level in the fall of 1960.

For the fourth time, in its 1960 session, the Legislature produced a packet of segregation measures, this time to prevent compliance with the order of May 16, 1960. Four of these 1960 measures — Acts 333, 495, 496 and 542 — and the three earlier acts referred to above — Acts 555 of 1954, Act 319 of 1956 and Act 256 of 1958 — were declared unconstitutional by a three-judge court on August 27, 1960, in the combined cases of *Bush* v. *Orleans Parish School Board* and *Williams* v. *Davis*, and their enforcement by "the Honorable Jimmie H. Davis, Governor of the State of Louisiana, and all those persons acting in concert with him, or at his direction, including the defendant, James F. Redmond," was enjoined. *Bush* v. *Orleans Parish School Board*, 187 F. Supp. 42, 45. At the same time, the effective date of the desegregation order was postponed to November 14, 1960. On this date the School Board began good faith compliance with the court's order.

At the First Extraordinary Session of 1960, however, the Louisiana Legislature adopted a new series of measures designed to thwart the orders of this court. Even after integration was an accomplished fact, the Legislature sought to defeat it. On November 30, 1960, this court held Acts numbered 2, 10 through 14, and 16 through 23, as well as House Concurrent Resolutions Nos. 10, 17, 18, 19 and 23, unconstitutional, *Bush* v. *Orleans Parish School Board*, 188 F. Supp. 916.

Undeterred, in its Second Extraordinary Session for 1960, the Louisiana Legislature passed further measures to frustrate the Orleans Parish School Board in its effort to comply with the orders of the court. On December 21, 1960, Act 2 and House Concurrent Resolutions 2, 23 and 28 of this session were declared unconstitutional and the enforcement of Act 5, now before us, was temporarily restrained. *Bush* v. *Orleans Parish School Board*, ——— F. Supp. ——— (Dec. 21, 1960).

The Third Extraordinary Session produced the measures under consideration here. A Fourth Special Session was abortive, but, at this writing, the Louisiana Legislature has just adjourned from its Fifth Extraordinary Session, the product of which has yet to be evaluated.

Louisiana officials compels us to the unpleasant but necessary task of issuing further injunctions. As before, the campaign is aimed at the duly elected Orleans Parish School Board which, in good faith, continues to comply with the orders of this court requiring desegregation of the public schools of New Orleans. A further effort is made to remove the entire Board and replace it with a new group appointed by the Legislature. Act 4, 3d Ex. Sess. 1960. And, in case the frontal assault should fail, a series of flanking maneuvers has been initiated. Among these are the Secretary of State's refusal to certify the recent re-election of one Board member, a resolution purportedly "addressing out of office" the superintendent of schools elected by the present Board, Sen. Conc. Res. 7, 3d Ex. Sess. 1960, and a statute which seeks to deprive the Board of its attorney and force upon it the State Attorney General, Act 5, 2d Ex. Sess. 1960.

In view of our reiterated injunction expressly prohibiting the Legislature, the Governor, the Attorney General and other state officials from "interfering in any way with the administration of the public schools for Orleans Parish by the Orleans Parish School Board."[2] it is difficult to understand these recent actions which so plainly violate the orders of the court. Certainly Louisiana's legislators cannot seriously have expected us to condone new devices for re-establishing an unjust racial discrimination which the highest court in the land has repeatedly condemned as unconstitutional. On the other hand, we are reluctant to assume that this is defiance merely for the sake of defiance, for it is unthinkable that, without even the excuse of pos-

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[2]See *Bush v. Orleans Parish School Board*, 187 F. Supp. 42, 45; temporary injunction issued November 30, 1960, on opinion reported at 188 F. Supp. 916; temporary injunction issued December 21, 1960.

sible success, a state would deliberately expose its citizenry to the unseemly spectacle of lawgivers, sworn to uphold the law, openly flouting the law.

Totally ignoring our previous findings to the contrary, they now insist that interference with the elected school board of Orleans Parish has nothing whatever to do with resistance to integration of the public schools of Orleans Parish. We are assured that the substitute school board, the new superintendent and the new school board attorney will all be bound by the outstanding orders of this court, and it is argued that a harmless change in personnel cannot affect the implementation of constitutional rights, hence, does not concern the federal tribunals. In short, we are told that the new legislation is pointless, or, at most, constitutes an innocent domestic amusement.

But, even if we were so disposed, we could not ignore the background of the new legislation. These are not the first blooms of a new spring. This litigation is now in its ninth year and the record is a chronology of delay, evasion, obstruction, defiance and reprisal. Nor is the state administration or the legislature which sponsored the measures under consideration a faceless new body. At the behest of the same Governor, the same legislators have recently concluded an unprecedented Fifth Special Session, and the pattern of their labors is more than familiar. Without attending all they have said and done, we must at least notice such of their past actions as have come to our judicial attention, and these are enough to make up a complete catalog of resistance to constitutional authority. No one needs reminding how many efforts have been made in recent weeks alone to oust the elected school board of New Orleans notwithstanding

the orders of this court. Against this history, who will say, without strong evidence, that Louisiana's officials have suffered a change of heart and that the measures now before us are harmless details of internal administration?

But it is not only the guilty past that condemns these recent acts. The very circumstances of their birth robbed them of innocence. Indeed, if there were no ulterior motive, no larger purpose to be served, why so much ado about so little? Is such a triviality as the replacement of the attorney for a single local school board, or even a change in the personnel of the board itself, a matter of sufficient gravity and urgency to require a special session of the state legislature?[3] Are these causes for which a Governor dispenses with usual delays and certifies the necessity for "emergency" legislation?[4] Do such questions normally provoke the highest state court to short-cut appellate procedures by exercising

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[3]Under the Louisiana Constitution, Art. 5, §14, the Governor may convene the Legislature in special session "on extraordinary occasions." Of the legislative measures now before us, one was adopted at the Second Extraordinary Session of 1960 (Act 5), and two at the Third Extraordinary Session (Act 4 and Sen. Conc. Res. 7).

[4]According to the endorsements thereon, Act 5, 2d Ex. Sess. 1960, was certified as emergency legislation by the Governor on December 12, 1960, three days before its passage, and Act 4, 3d Ex. Sess. 1960, was so certified on January 12, 1961, the day of passage. By virtue of this certification both measures become immediately effective upon approval by the Governor, instead of 20 days after the end of the session in which each was adopted. See La. Const., Art. 3, §27. The measure purporting to address out of office the superintendent of the Orleans Parish schools (S. Conc. Res. 7, 3d Ex. Sess. 1960), being a resolution, presumably became effective when concurred in by the House of Representatives without the necessity of such a certificate.

its extraordinary "supervisory" jurisdiction?[5] Through its official declarations the government of Louisiana has itself exposed the new legislation.

No further proof is needed, but there is more. As already noted in our earlier decision[6] granting a temporary restraining order against its enforcement, the real object of Act 5 of the Second Special Session was dramatically revealed by the Attorney General himself when, moments after relieving the School Board's regular attorney, he sought to withdraw pending motions by the Board without even consulting his client. The vice of the more recent measures is disclosed in the text itself. Thus, as a premise to establishing a new legislatively appointed board, Act 4 of the Third Special Session pointedly recited earlier acts and resolutions purporting to abolish the elected board which this court has already ruled unconstitutional, And the resolution ousting the superintendent of the New Orleans schools, Sen. Conc. Res. 7, 3d Ex. Sess. 1960, assigns as the sole "rea-

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[5]On December 3, 1960, a judge of the Nineteenth Judicial District Court of Louisiana, without a hearing, granted a restraining order directed to the Governor and other state officers enjoining them from enforcing Act 2 of the Second Extraordinary Session of 1960, the predecessor of the present measure creating a new school board for Orleans Parish. Before a hearing on the motion for preliminary injunction could be had, and bypassing the Court of Appeals, the Louisiana Supreme Court granted certiorari, and, in less than two weeks, issued its decree reversing the district judge. In its opinion the Louisiana Court noted that it "will not ordinarily exercise its supervisory jurisdiction in cases such as this," but did so here "because of the statewide and extraordinary public interest and importance" of the matter. *Singelmann* v. *Davis*, ____La.____, 125 So. 2d 414, 415.

[6]See *Bush* v. *Orleans Parish School Board*, ____ F. Supp. ____ (Dec. 21, 1960).

sonable cause" for removal[7] his failure, in obedience to the orders of the court, to recognize these invalid laws. Similarly, the only excuse offered by the Secretary of State for his refusal to certify the re-election of Mr. Sutherland to the Orleans Parish School Board is the claim that, under the same unconstitutional statutes, the office was abolished.

The pattern is obvious. The ultimate goal remains to block desegregation of the public schools and frustrate the enjoyment of constitutional rights. The method is to wrest control of the New Orleans schools from the elected board and, incidentally, to punish the members of that board and its faithful employees for complying with the mandate of the court. But, since our orders stand in the way of that design, the immediate effect of the measures is to defy the authority of this court.

In the circumstances, the United States, as amicus curiae, actively intervened and is the moving party on the applications now before us. Since the immediate effect of the recent legislative measures is to frustrate orders of a court of the United States and the primary reason for enjoining those acts is to vindicate the authority of that court, this

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[7]The Louisiana Constitution, Art. 9, §3, permits the Legislature to "address" out of office any "officer" for "reasonable cause." It seems doubtful that the parish superintendent of schools is an "officer" within this provision. *State* v. *Stanley*, 173 La. 807, 138 So. 845. On the contrary, it appears that he can only be removed by the board which elected him for the causes specified in La. R.S. 17:54, and, then, only after hearing. See *Bourgeois* v. *Orleans Parish School Board*, 219 La. 512, 53 So. 2d 251. Moreover, even if the superintendent is subject to removal by the Legislature, it might be questioned whether obedience to the orders of a court of the United States constitutes a "*reasonable*" cause under the Louisiana Constitution. In the circumstances, however, it is unnecessary to decide these matters of local law.

seems altogether appropriate.[8] Nevertheless, defendants strenuously object, claiming that the government has no interest in this private litigation and should not be permitted to stand in for the original plaintiffs. In view of the compelling precedent in the parallel case of *Faubus* v. *United States*, 8 Cir., 254 F. 2d. 797,[9] we might reject the objection summarily, especially since it is, at best, a delaying tactic.[10] But we deem it important to state unequivocally the right of the United States to appear in these proceedings because it involves a principle vital to the effective administration of justice.

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[8]This is not to say that the original plaintiffs or the Orleans Parish School Board, as cross-claimants, would not have had standing to seek the relief requested here by the United States. On the contrary, since the ultimate goal of the measures under consideration is to deny the plaintiffs enjoyment of their constitutional rights, they might properly have brought these applications. And the School Board, as the victim of these measures of reprisal and as the guardian of the school children of the community, also has sufficient interest to ask for these injunctions. See *Brewer* v. *Hoxie School District No. 46*, 8 Cir., 238 F. 2d 91. But this in no way contradicts the distinct interest of the United States in protecting the integrity of its courts.

[9]Two reasons are given why *Faubus* should not be deemed a binding precedent, the first being that the plaintiffs there had filed an application identical to that of the United States, so that discussion of the government's right, as amicus curiae, to obtain injunctive relief was mere obiter dicta; the second, that the legislative history of the Civil Rights Act of 1957 was not brought to the court's attention in that case. The first point has some merit, but the fact is that, whether required to do so or not, the Court of Appeals did rule on the propriety of the government's participation, and that opinion, even if dicta, carries some weight. As to the other distinction, assuming the allegation to be correct, we must assume that the Court of Appeals would have found the argument based on the history of the Civil Rights Act no more persuasive than we have.

[10]As just stated, note 8 supra, either the original plaintiffs or the Orleans Parish School Board might properly have brought these applications. Hence, even if we were to dismiss the present petitions, the next day the same relief could be requested by another party and the defendants would have gained nothing.

The arguments advanced by the state's representatives reveal a complete misconception of the government's role. Accordingly, it is important to emphasize *when, how* and for *what reason* the United States entered the case. On November 25, 1960, the court invited the Attorney General and the United States Attorney to participate by the following order:

IT IS ORDERED that the United States be, and it is hereby, requested and authorized to appear in these proceedings as *amicus curiae,* by and through the Attorney General of the United States and the United States Attorney for the Eastern District of Louisiana, to accord the court the benefit of its views and recommendations with the right to submit to the court pleadings, evidence, arguments and briefs, and to initiate such further proceedings as may be appropriate, in order to maintain and preserve the due administration of justice and the integrity of the judicial processes of the United States. The date is significant. The United States intervened long after this court had finally declared plaintiffs' right to attend desegregated public schools, and after the time set for the practical implementation of that constitutional right. The merits had been adjudicated and the only matter remaining was the enforcement of the court's injunction. It was only when the Governor, the Legislature, and other officials of the State of Louisiana attempted to interpose the power and prestige of the state in a massive effort to frustrate the court's decrees that we called upon the United States as a friend of the court. It should also be stressed that the government appeared *at the court's request.* The Justice Department was not intervening to protect a special interest of its own. Nor was it to champion the rights of the plaintiffs or defend the

harrassed School Board. It came in, by invitation, to aid the court in the effectuation of its judgment, "to maintain and preserve the due administration of justice and the integrity of the Judicial processes of the United States."

Against this background all defendants' authorities are irrelevant. In the present context it is immaterial that in adopting the Civil Rights Acts of 1957 and 1960 Congress failed to authorize the Attorney General to initiate desegregation proceedings.[11] That is not the government's role here. In the first place, this case was in the courts, at the instigation of private litigants, for more than eight years when the United States made its appearance, so that the Justice Department could hardly be said to have "initiated" the proceedings. Moreover, even now, the Attorney General does not seek to advise the court on the merits, for the case on the merits is long since closed. As we have said, the government entered the case only to vindicate the authority of the court. Nothing in the history of the recent civil rights legislation indicates that Congress sought to withdraw the right of the United States to intervene under these circumstances. On the contrary, the Senate debates on the Civil Rights Act of 1957 show the opponents of "Part III" of the original bill which would have authorized the Attorney General to file desegregation suits expressly recognized the right of the United States to intervene in such litigation to

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[11] See "Part III" of H.R. 6127, 85th Cong., 1st Sess., as originally introduced, rejected by the Senate. Cong. Rec. 85th Cong., 1st Sess., 11378; and "Title III" of H.R. 3147, 86th Cong., 2d Sess., deleted by the House Judiciary Committee. H.R. Report No. 956, in 1960 U.S. Cong. & Adm. News, No. 6, pp. 25, 37-38, 41.

preserve the integrity of its courts.[12] Despite the rejection of "Part III," that inherent right would remain. Invoking this reserved power, the Attorney General intervened in the *Faubus* case to protect the judicial process. Yet, in considering the Civil Rights Act of 1960, though fully aware of the Little Rock precedent, Congress did nothing to withdraw from the United States its right to intervene in similar cases. Apparently it preferred this method of enforcing court orders to the use of troops.

Nor is there merit to the argument that, because the United States is styled an "amicus curiae," it cannot ask for affirmative relief. It is true that ordinarily an amicus curiae merely tenders a brief advising the court on the law applicable to the case. But, as shown, in these proceedings the United States is no ordinary amicus. Whether "amicus curiae" is the proper title is a quibble over labels. However, we think it singularly appropriate here, since the role of the United States in this proceeding is more truly that of a

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[12] In the debate in the Senate, opponents of the bill pointed out that Section 121 of Part III would permit the Attorney General to bring an action at government expense to enforce an individual's rights whether or not that person wished the Attorney General to bring such an action (Sen. Russell, 103 Cong. Rec. 9711-2; Sen. Hill, 103 id. 10230; Sen. Ervin, 103 id. 10087, 10090, 10233; Sen. Thurmond, 103 id. 10239; Sen. Ellender, 103 id. 1054-5; Sen. McClellan, 103 id. 10468; Sen. Byrd, 103 id. 10673; see also, Sen. Carroll, 103 id. 10090). But they recognized the distinction between the government's bringing an action to enforce a private individual's civil rights and the inherent right of a government "to use necessary power [specifically, the injunctive process] for self-protection (Sen. Hill, 103 id. 10227; see also, Sen. Ellender, 103 id. 10454). Senator Stennis pointed out that injunction proceedings to prevent obstructions to federal court orders, as illustrated by the *Kasper* contempt case (see *Kasper* v. *Brittain*, 6 Cir., 245 F. 2d 92), were not the kind of proceedings to which the opponents of Section 121 had reference, "and it is most important that this difference be emphasized" (103 id. 10073). Senators Kefauver and Cooper likewise distinguished the *Kasper* case (103 id. 10823, 10918).

friend of the court than is often the case with so-called "amici," who are rather friends of one party or the other. Nor is this designation under like circumstances without precedent: *Faubus* v. *United States*, supra; *A. B. Dick Co.* v. *Marr*, 2 Cir., 197 F. 2d 498; *Root Refining Co.* v. *Universal Products Co.*, 3 Cir., 169 F. 2d 514; *Helmbright* v. *John A. Gebelein, Inc.*, D. Md., 19 F. Supp 621.

The real objection is to the participation of the United States in any guise, whether as party plaintiff, intervenor, or amicus. It is said that the government has no "interest." Of course, it has no proprietary or financial interest to protect.[13] And, in view of the history of the recent Civil Rights Acts, perhaps it cannot voice its obvious interest in securing for all citizens the enjoyment of constitutional rights.[14] But that does not mean that the Justice Department of the United States can have nothing to do with the administration of justice or that it must remain indifferent when the judgments of federal courts are sought to be subverted by state action. The interest of the government here is the same as that which justifies its prosecution for obstruction of court orders in violation of 18 U.S.C. §1509, or for contempt of those orders under 18 U.S.C. §401. Admittedly, the Attorney General can act on behalf of the United States

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[13] Needless to say, lack of financial interest does not disqualify the United States as a party plaintiff. *In re Debs*, 158 U.S. 564, 583-587.

[14] There is some doubt whether the mere failure of Congress to expressly authorize the Attorney General to prosecute desegregation suits strips him of that power, if the United States has an interest in the matter. See *United States* v. *California*, 332 U.S. 19, 28, in which the Supreme Court rejects a similar argument, saying: "That Congress twice failed to grant the Attorney General specific authority to file suit against California, is not a sufficient basis upon which to rest a restriction of the Attorney General's statutory authority."

courts in those instances. Why should he not be permitted to come in here to accomplish the same purpose by different, less radical means? The absence of specific statutory authority is of itself no obstacle, for it is well settled that there is no such prerequisite to the appearance of the United States before its own courts. *United States* v. *San Jacinto Tin Co.*, 125 U.S. 273, 278-285; *Kern River Co.* v. *United States*, 257 U.S. 147, 155; *Sanitary District* v. *United States*, 266 U.S. 405, 426. Nor do the statutes governing the Attorney General's participation in court proceedings contain a prohibition. See 5 U.S.C. §§ 309, 316. On the contrary, the amendment to Section 1509 of Title 18, added by the Civil Rights Act of 1960, expressly permits the United States to seek *preventive relief* even though a crime may already have occurred.

The same considerations govern from the court's point of view. No one doubts that federal courts may call on the Justice Department to enforce their decrees by resort to arms if necessary. *In re Neagle*, 135 U.S. 1. Nor is it disputed that they can direct the United States Attorney to prosecute contempts of their authority. F.R. Cr. P., Rule 42. But must they resort to such extreme measures to obtain the aid of the executive branch in the implementation of their judgments? All reason rejects that absurd result. And

nothing opposes the more temperate course followed here.[15] Indeed, the Supreme Court has said: "After all, a federal court can always call on law officers of the United States to serve as *amici*." *Universal Oil Products Co.* v. *Root Mfg. Co.*, 328 U.S. 575, 581.[16]

We conclude that the participation of the United States at this stage of the proceeding is entirely appropriate. We invited the United States to enter the case in an effort to find a peaceful solution to the problem created by the state's interference with the orders of the court. To do otherwise was to risk anarchy. Through this procedure, we sought to keep the conflict in the courts. Thus the rule of

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[15]Compare *In re Debs*, supra, at 583: "So, in the case before us, the right to use force does not exclude the right of appeal to the courts for a judicial determination and for the exercise of all their powers of prevention. Indeed, it is more to the praise than to the blame of the government, that, instead of determining for itself questions of right and wrong on the part of these petitioners and their associates and enforcing that determination by the club of the policeman and the bayonet of the soldier, it submitted all those questions to the peaceful determination of judicial tribunals, and invoked their consideration and judgment as to the measure of its rights and powers and the correlative obligations of those against whom it made complaint. * * *"

[16]Undoubtedly, the court might have itself provoked a hearing and issued the injunctions sua sponte in order to effectuate its judgments. 28 U.S.C. §1651. See *Hazel-Atlas Co.* v. *Hartford Co.*, 322 U.S. 238, 246: "Surely it cannot be that preservation of the integrity of the judicial process must always wait upon the diligence of litigants. The public welfare demands that the agencies of public justice be not so important that they must always be mute and helpless victims * * *" But the court should not be compelled to be its own attorney. It is entitled to seek out a friend to protect its integrity, and, as the Court of Appeals said in *Faubus*, supra, at 805, "the court could not, with propriety, employ private counsel to do the necessary investigative and legal work."

We note that defendants, in support of their argument that the United States is an unnecessary party, say nothing of the court's right to act on its own motion. This is obviously because the proposition cuts both ways. Indeed, if the court may grant these applications sua sponte, nothing is accomplished by eliminating the government as the moving party.

law was preferred to the law of the jungle. Why the defendants deprecate this choice is difficult to understand. Certainly they were not fatuous enough to hope that the United States would stand idly by and watch the orders of its courts flouted, particularly in this sensitive area of constitutional rights.

On these findings temporary injunctions will issue restraining the enforcement of Act 5 of the Second Extraordinary Session of the Louisiana Legislature for 1960 and Act 4 and Senate Concurrent Resolution 7 of the Third Extraordinary Session. For the present, however, there appears no compelling reason to direct the Secretary of State to certify the re-election of Mr. Sutherland, since all parties agree that he retains his membership in the Orleans Parish School Board as a hold-over regardless of the recent election. At this time, therefore, the application for a mandatory injunction will be denied, reserving to the United States or any other interested party the right to re-urge it should Mr. Sutherland's title to office be threatened.

Judgment accordingly.

(Signed) RICHARD T. RIVES
RICHARD T. RIVES, Judge
United States Court of Appeals

(Signed) HERBERT W. CHRISTENBERRY
Herbert W. Christenberry,
Chief Judge
United States District Court

(Signed) J. SKELLY WRIGHT
J. SKELLY WRIGHT, Judge
United States District Court

New Orleans, Louisiana
March 3, 1961
(SEAL)
CLERK'S OFFICE
A TRUE COPY:
MARCH 3, 1961
(Signed) REBA SCOTT
Deputy Clerk, United States District Court
Eastern District of Louisiana
New Orleans, La.

United States District Court
Eastern District of Louisiana
New Orleans Division

Earl Benjamin Bush, et al,

Plaintiffs,

versus

No. 3630
Civil Action

Orleans Parish School Board, et al.,

Defendants.

TEMPORARY INJUNCTION

This case came on for hearing on motions of the United States, amicus curiae, for temporary injunction, restraining the enforcement of Act 5 of the Second Extraordinary Session of the Louisiana Legislature for 1960, and Act 4 and Senate Concurrent Resolution 7 of the Third Extraordinary Session of the Louisiana Legislature for 1960.

It being the opinion of this court that all Louisiana statutes which would directly or indirectly require segregation of the races in the public schools, or deny them public funds because they are desegregated, or interfere with the operation of such schools, pursuant to the orders of this court, by the duly elected Orleans Parish School Board, are unconstitutional, in particular, the aforesaid Act 5, Act 4, and Senate Concurrent Resolution 7;

IT IS ORDERED that the Honorable Jimmie H. Davis, Governor of Louisiana, the Honorable Clarence C. Aycock, Lieutenant Governor of Louisiana, the Honorable Jack P. F. Gremillion, Attorney General of the State of Louisiana,

the Legislature of the State of Louisiana and the individual members thereof, Shelby M. Jackson, State Superintendent of Education, the Orleans Parish School Board, Lloyd J. Rittiner, Louis C. Riecke, Matthew R. Sutherland, Theodore H. Shepherd, Jr. and Emile A. Wagner, Jr., the members thereof, James F. Redmond, Superintendent of Schools for the Orleans Parish School Board, A. P. Tugwell, Treasurer of the State of Louisiana, Roy R. Theriot, State Comptroller, the Louisiana State Board of Education and the individual members thereof, Paul B. Habans, Gerald J. Gallinghouse, David B. Gertler, Edward F. LeBreton, Charles Deichmann, Ridgley C. Triche, P. P. Branton, Welborn Jack, Vial Deloney, William Cleveland, E. W. Gravolet, F. Otway Denny, Edward J. Penedo, and John Singreen, their successors, agents, and representatives, and all other persons who are acting or may act in concert with them, be, and they are hereby, restrained, enjoined and prohibited from enforcing or seeking to enforce by any means the provisions of Act 5 of the Second Extraordinary Session of the Louisiana Legislature for 1960, and Act 4 and Senate Concurrent Resolution 7 of the Third Extraordinary Session of the Louisiana Legislature for 1960, and from otherwise interfering in any way with the operation of the public schools for the Parish of Orleans by the duly elected Orleans Parish School Board, pursuant to the orders of this court.

IT IS FURTHER ORDERED that copies of this temporary injunction shall be served forthwith upon each of the defendants named herein.

IT IS FURTHER ORDERED that copies of this temporary injunction shall be served forthwith on the Louisiana Sovereignty Commission, through its chairman, and on the

Joint Legislative Committee on Un-American Activities of the Louisiana Legislature, through its chairman.

Inasmuch as this temporary injunction is issued on the motions of the United States, no bond is required. 28 U.S.C. §2408.

RICHARD T. RIVES, Judge
United States Court of Appeals

HERBERT W. CHRISTENBERRY, Chief Judge
United States District Court

J. SKELLY WRIGHT, Judge
United States District Court

Issued March 3, 1961
at New Orleans, Louisiana

Hamiter, Jr. Concurs with written reasons.

THURSDAY, DECEMBER 15, 1960

SUPREME COURT OF LOUISIANA

NO. 45,447

GEORGE L. SINGELMANN, ET AL

versus

JIMMIE H. DAVIS, ET AL

IN RE: Jimmie H. Davis, Governor of Louisiana, et al, applying for Writs of Certiorari, Prohibition, and Mandamus to the Judges of the Nineteenth Judicial District Court for the Parish of East Baton Rouge, State of Louisiana.

HAMLIN, Justice.

The only question here presented is the constitutionality of Act No. 2 of the Second Extraordinary Session of 1960.

This Court will not ordinarily exercise its supervisory jurisdiction in cases such as this. Nevertheless, because of the statewide and extraordinary public interest and importance, and for the reason that the public fisc is involved, we deemed it advisable to consider this matter. Accordingly

we directed certiorari to the Honorable Fred S. LeBlanc, Judge of the Nineteenth Judicial District Court for the Parish of East Baton Rouge, in order that we might review his action granting, without a hearing, a temporary restraining order on December 3, 1960, enjoining, restraining and prohibiting

> "Jimmie H. Davis, Governor of Louisiana, from appointing or issuing commissions to any members of the Orleans Parish School Board, created by Act No. 2 of the Second Extraordinary Session of 1960;
>
> "Wade O. Martin, Jr., Secretary of State of the State of Louisiana, from countersigning any such commissions;
>
> "Andrew P. Tugwell, Treasurer of the State of Louisiana, from paying any such warrants out of any funds appropriated, dedicated or provided for the operation of the public schools in the Parish of Orleans; and
>
> "Roy R. Theriot, Comptroller of the State of Louisiana, from drawing or issuing any such warrants on the Treasurer for the operation of the Orleans Parish public school system; and all and each of them from taking any action or doing any act as result of or pursuant to Act No. 2 of the Second Extraordinary Session of 1960, * * * "

Act No. 2 of the Second Extraordinary Session of 1960[1] creates a school board for the Parish of Orleans to be known and designated as the "School Board of the Parish of Orleans," to consist of five members to be elected at large from the Parish of Orleans at the next congressional elections. The interim members serving from the time the act takes effect until the next congressional elections are to be appointed by the Governor of the State of Louisiana. In this

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[1]"Be it enacted by the Legislature of Louisiana:

"Section 1. That Section 121 of Title 17 of the Louisiana Revised Statutes of 1950, which was specifically repealed by Act No. 25 of the first Extra Session of 1960, approved November 8, 1960, and, also repealed, insofar as said R.S. 17:121 is in conflict therewith, by Act No. 171 of the First Extra Session of 1960, approved November 8, 1960, and which R.S. 17:121 was suspended by Section 6 of House Concurrent Resolution No. 17 of said Extra Session, Section 6 of which latter resolution specifically preserved the suspension by said Section 6 of House Concurrent Resolution No. 10, be revived, amended and re-enacted, so as to read as follows:

"Section 121 A. There is hereby created a school board for the Parish of Orleans, to be known and designated 'School Board of the Parish of Orleans' to consist of five members, to be elected at large from the Parish of Orleans, at the congressional elections in the City of New Orleans in accordance with law. The members to serve in the interim from the time this act takes effect until the next congressional election in the Parish of Orleans shall be appointed by the Governor, and thereafter their successors shall be elected as provided in the primary and general election laws for other parish school boards. The first members elected shall draw lots for two terms of two years, two terms of four years, and one term of six years, and their successors shall be elected for terms of six years.

"The School Board of the Parish of Orleans shall have power and authority to borrow, receive and disburse money. It may levy, collect and receive and disburse money. It may levy, collect and receive school taxes as now authorized by the Constitution and laws of the State of Louisiana. It shall deposit all funds received by it in a bank or banks approved as fiscal agents of the state.

"B. The Legislature of Louisiana reserves to itself all powers vested in it by law, relative to the public schools of the Parish of Orleans, and particularly by Act No. 17 and any other act or resolution passed at the first or second Extra Session of 1960, except as to the powers and authority herein specifically granted to School Board of the Parish of Orleans."

act the school board is granted limited powers, financial in nature, such as to borrow, receive and disburse money, to levy, collect and receive school taxes, etc. All other powers relative to the public schools of Orleans Parish are specially reserved in the Legislature.

The sole basis of plaintiffs' suit is that Act No. 2 of the Second Extraordinary Session of 1960 is unconstitutional in that it violates Section 10 of Article 12 of the Constitution of Louisiana, which authorizes the Legislature to provide for the election of members of the parish school boards, by authorizing the Governor to appoint the first members of the School Board of the Parish of Orleans for the interim between the effective date of the act and the next congressional election.

In their petition for the above order plaintiffs alleged that unless Honorable Jimmie H. Davis was restrained from making appointments and issuing commissions, they would suffer immediate and irreparable injury in that the State had appropriated thousands of dollars for the operation and maintenance of the public schools in the Parish of Orleans and would issue warrants for its disbursal. It was alleged that public funds and tax money would be unlawfully expended to the prejudice of petitioners and other taxpayers in the Parish of Orleans.

On November 30, 1960, the United States District Court for the Eastern District of Louisiana, New Orleans Division,

declared Act No. 25[2] of the First Extraordinary Session of 1960 (pursuant to which Act No. 2 of the First Extraordinary Session was enacted) unconstitutional because it was "part and parcel of the original segregation package" introduced in the Legislature on the first day of the Special Session, the object of said legislation being to deprive colored citizens of a right conferred upon them by the Constitution of the United States; and said Court enjoined Honorable Jimmie H. Davis, Governor of Louisiana, and others "from otherwise interfering in any way with the operation of the public schools for the Parish of Orleans by the Orleans Parish School Board, pursuant to the Orders of this Court."[3] On December 12, 1960, the Supreme Court of the

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[2] "To amend and re-enact Section 51 of Title 17 and to repeal Section 121 of Title 17 of the 1950 Louisiana Revised Statutes relative to Parish School Boards.

"Be it enacted by the Legislature of Louisiana:

"Section 1. That Section 51 of Title 17 of the 1950 Louisiana Revised Statutes, relative to Parish School Boards, be amended and re-enacted so as to read as follows:

"Section 51. Parish boards as bodies corporate; officers upon whom service may be made

"There shall be a parish school board for each of the parishes, and the Legislature shall make provision for the creation and election of a School Board for the Parish of Orleans, and these several parish school boards are constituted bodies corporate with the power to sue and be sued under the name and style (Name of Parish) Parish School Board. Citation shall be served on the president of the board and in his absence on the vice-president.

"Section 2. That Section 121 of Title 17 of the 1950 Louisiana Revised Statutes relative to the nomination and election of members of the Orleans Parish School Board, qualifications, compensation, and vacancies, be and the same is hereby repealed in its entirety."

[3] The opinion and decree was issued in the causes entitled, "United States of America v. State of Louisiana, et al," and "Earl Benjamin Bush, et al v. Orleans Parish School Board, et al," and "Harry K. Williams et al v. Jimmie H. Davis, et al," Civil Actions Nos. 10566, 3630 and 10329 of the Docket of the United States District Court for the Eastern District of Louisiana, Rives, Christenberry and Wright, Judges Presiding.

United States refused to issue stay orders in the above proceedings.

The actions of the United States District Court took place before the persons appointed or to be appointed by the Governor as Members of the Orleans Parish School Board had begun to function or perform any acts and without any evidence having been adduced that they would act unconstitutionally or in violation of any orders or decrees of the United States District Court. Under these circumstances, if Act No. 25 is constitutional on its face, as it is, and is a measure adopted, as stated by the United States District Court, "in an area peculiarly reserved for exclusive state action," how does the mere statement that it was "part and parcel of the original segregation package" justify in law a holding of unconstitutionality? Such a holding is based on an assumption that a school board not yet provided for or even in existence will act or perform its duties in an unconstitutional way. This is not a basis in law for declaring an act unconstitutional.

With reference to Act No. 2, creating a school board for Orleans Parish with limited powers financial in nature, it is clear that it was adopted by the Legislature for the purpose of bringing financial order where financial chaos exists. Its primary purpose was to create a school board with power and authority to discharge from public funds large financial obligations incurred in the operations of the Orleans Parish public schools, no such power and authority being in existence at the time the act was adopted.

The first point to be decided in this Court is that of the right of the Legislature to create parish school boards and

the right to abolish boards so created; and the second point for decision is that of the right of the Legislature to create a new school board in the place of an abolished board and provide for the appointment of board members during the interim between the effective date of Act No. 2 of the Second Extraordinary Session and the date of the regular congressional elections.

Act No. 2 under consideration herein and Act No. 25 of the First Extraordinary Session are authorized by Section 10 of Article XII of the Constitution of Louisiana of 1921, which provides:

> "The Legislature shall provide for the creation and election of parish school boards which shall elect parish superintendents for their respective parishes, and such other officers or agents as may be authorized by the Legislature. * * * "

In the case of State ex rel. Board of Public Schools v. City of New Orleans 42 La. Ann., 92, 7 So. 674 (1890), this Court, in no uncertain terms, held that the system of free public schools in Louisiana is a State institution, for the establishment, maintenance and support of which the State is required to provide by taxation, or otherwise.[4]

This authority also sets forth:

> "It is elementary that a State, in the absence of constitutional prohibition, may delegate part of her political and administrative powers to (gov-

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[4]See, also, Bank of Winnfield v. Brumfield, et al, 124 So. 628; State v. Earham, 137 So. 862, 864; State v. Mason, 133 So. 809, 811.

ernmental sub-divisions) within her borders, which then become State functionaries; and that whenever such delegation may take place, the State can confer on them certain rights, which she may subsequently extend, abridge *or withdraw,* as may seem just and advisable, but without impairing the obligation of contracts.

"This privilege of delegation is essential in the very nature of things, as otherwise the local administration necessary for public good would be an impossibility, in consequence of the practical inability of the State general government to well provide by itself for the regulation of administrative matters on numerous important details in the different parts of the State." (Emphasis ours.)

In the early case of Eben Newton v. Board of County Commissioners of Mahoning County, Ohio, 100 U. S. 548, 25 L. Ed. 710, the United States Supreme Court stated:

"The legislative power of a State, except so far as restrained by its own Constitution, is at all times absolute with respect to all offices within its reach. It may at pleasure create or abolish them or modify their duties. It may also shorten or lengthen the term of service. And it may increase or diminish the salary or change the mode of compensation."

See, Higginbotham v. City of Baton Rouge, Louisiana, 306 U.S. 535, 83 L. Ed. 968, and authorities

cited therein, wherein the foregoing principle was affirmed.

See also, 172 ALR 1380, Porterie v. Smith, 184 La. 263, 166 So. 72.

We conclude that Acts Nos. 2 and 25, supra, are valid and constitutional enactments on their face. The Legislature cannot be enjoined from enacting valid legislation; actions under the law can be enjoined only if unconstitutionally administered, applied, and construed.

Where an act is constitutional on its face, *courts cannot assume that it will be given an unconstitutional application or construction or be administered unconstitutionally.* Any other interpretation would allow the school board which was functioning under the act by which such school board was abolished to remain in office indefinitely; perhaps beyond the terms for which the respective members were elected. The officers appointed or to be appointed under the authority of Act No. 2 of the Second Extraordinary Session will be amenable not only to the process of this Court but to that of any other court having jurisdiction if they act unlawfully or unconstitutionally.

The case of Gomillion v. Lightfoot, 81 S. Ct. 125, cited by the United States District Court as authority for holding Act No. 25 unconstitutional, is not apposite for the reason that in that case there was an act performed; i.e., the enactment of a statute redefining municipal boundaries so as to exclude negro citizens.

This brings us to a discussion as to whether or not the Legislature could provide for the appointment of board members by the Governor during the interim between the effective date of Act No. 2 and the date provided for the next congressional election.

Section 10 of Article XII of the Louisiana Constitution of 1921, supra, must be construed in connection with Article V, Section 11, which reads as follows:

"Governor — Appointment of officers

> "He shall nominate, and, by and with the advice and consent of the Senate, appoint all officers whose offices are established by this Constitution and whose appointment, or election, is not herein otherwise provided for; *except that the* Legislature may provide the mode of filling all *offices created by it.*" (Emphasis ours).

We are of the opinion that under the foregoing articles of the Constitution, the Legislature has the right to provide for the interim appointments by the Governor. It certainly provided the mode of filling the offices created by it.

For the reasons assigned, the temporary restraining order hereinabove set forth, granted December 3, 1960, is hereby dissolved, recalled and set aside; plaintiffs' suit is dismissed at their cost.

SUPREME COURT OF LOUISIANA

No. 45,447

GEORGE L. SINGLEMANN ET AL

versus

JIMMIE H. DAVIS ET AL

HAMITER, Justice, concurring.

In this cause plaintiffs assail Act No. 2 of the Second Extraordinary Session of 1960, they having alleged as the sole ground for their attack that such statute violates Article XII, Section 10 of the Louisiana Constitution which reads in part:

"The Legislature shall provide for the creation and election of parish school boards * * * ." The defendants, in their answer, denied the allegation. Consequently, we are called upon to discuss and determine herein only the question of whether the particular alleged violation has occurred.

It is my opinion that when the mentioned constitutional provision is considered in connection with Article V, Section 11 of the Louisiana Constitution, as must be done, a negative answer to the single posed question is required.

Accordingly, I respectfully concur in the decree.

ORDER DESIGNATING UNITED STATES OF AMERICA AS AMICUS CURIAE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

NO. 3630
CIVIL ACTION

EARL BENJAMIN BUSH, ET AL,
Plaintiffs,

versus

ORLEANS PARISH SCHOOL BOARD, ET AL,
Defendants.

NO. 10329
CIVIL ACTION

HARRY K. WILLIAMS, ET AL,
Plaintiffs,

versus

JIMMIE H. DAVIS, Governor of the
State of Louisiana, ET AL,
Defendants.

It appearing from the verified supplemental complaint of the plaintiffs in *Bush, et al v. Orleans Parish School*

Board, et al, from the verified cross complaint and third party claim of the defendants in *Bush, et al v. Orleans Parish School Board, et al,* and from the verified complaint and supplemental complaint of the plaintiffs in *Williams, et al v. Davis, et al,* that the defendants in *Bush, et al v. Orleans Parish School Board, et al* have been interfered with, obstructed and impeded in carrying out the orders of this court made and entered on May 16 and August 30, 1960, in *Bush et al v. Orleans Parish School Board, et al;* and

The defendants in *Bush, et al v. Orleans Parish School Board, et al* having strenuously urged to this court in their Motion to Vacate, filed November 17, 1960, that they "interested solely in the education of the children of this parish, find themselves caught and entangled in a legal struggle between the Legislature of the State of Louisiana on the one hand, and the United States Judiciary on the other" and that the "resolution of the current battle between the State Legislature and the Federal Judiciary is far beyond the powers given to the Orleans Parish School Board," and

The court being of the opinion that the public interest in the administration of justice should be represented in these proceedings and that it will be of assistance to the court to have the benefit of the views of counsel for the United States as *amicus curiae,* and this court being entitled at any time to call upon the law officers of the United States to serve in that capacity, now, therefore,

IT IS ORDERED that the United States is hereby requested and authorized to appear in these proceedings as *amicus curiae,* by and through the Attorney General of the United States and the United States Attorney for the East-

ern District of Louisiana, to accord the court the benefit of its views and recommendations with the right to submit to the court pleadings, evidence, arguments and briefs, and to initiate such further proceedings as may be appropriate, in order to maintain and preserve the due administration of justice and the integrity of the judicial processes of the United States.

RICHARD T. RIVES, Chief Judge
United States Court of Appeals

(Signed) HERBERT W. CHRISTENBERRY
HERBERT W. CHRISTENBERRY,
Chief Judge United States
District Court

(Signed) J. SKELLY WRIGHT
J. SKELLY WRIGHT, Judge
United States District Court

November 25th, 1960
Entered December 2, 1960

APPENDIX B

ACT 4

HOUSE BILL NO. 16

BY: MESSRS. FIELDS, LEHMANN AND TRICHE

AN ACT

To amend and re-enact Sub-part C of Chapter 1 of Title 17 of the Louisiana Revised Statutes of 1960, Sections 121 through 128 of said Title, relative to the Orleans Parish School Board;

ORIGINATED
IN THE
HOUSE OF REPRESENTATIVES

(Signed) W. GREGG COLE
Clerk of the House of Representatives

Certified by the Governor as
Emergency Legislation.
1-12-61
date
Wade O. Martin, Jr.
Secretary of State

Received by Secretary of State
this 12th day of January, 1961
(Signed) WADE O. MARTIN, JR.
Secretary of State

Received by the Governor
January 12, 1961 at 3:50 P.M.
(Signed) DORIS C. ANDRIES

ACT NO. 4

HOUSE BILL NO. 16

BY: MESSRS. FIELDS, LEHMANN AND TRICHE

AN ACT

To amend and re-enact Sub-part C of Chapter 1 of Title 17 of the Louisiana Revised Statutes of 1950, Sections 121 through 128 of said Title, relative to the Orleans Parish School Board; to provide for the election of the members of the Orleans Parish School Board at the congressional elections beginning with the next such election; to name, constitute, designate and appoint the members of said Orleans Parish School Board to serve in the interim until said election is held; to provide that said Board shall be the successor in law of the Orleans Parish School Board abolished by Acts 17 and 25 of the First Extraordinary Session of the Louisiana Legislature of 1960; to terminate and revoke the sus-

pension of Part II of Title 17 of said Revised Statutes made by House Concurrent Resolutions Numbered 10 and 17 and Act 17 of the First Extraordinary Session of the Louisiana Legislature of 1960; and to repeal all laws or parts of laws in conflict with this Act, and particularly Act 2 of the Second Extraordinary Session of 1960.

WHEREAS the Supreme Court of Louisiana in the matter entitled Singelmann, et al. vs. Davis, et al., No. 45,447 on the docket of said Court, has sustained the constitutional power of the Legislature of Louisiana to provide the manner of filling all offices created by it, as well as its constitutional power to abolish such offices; and

WHEREAS, the Orleans Parish School Board, in existence prior to November 8, 1960, was abolished by laws which became effective on that date; and,

WHEREAS, it is the purpose of this Legislature to create an Orleans Parish School Board as the successor in law of the Board abolished as aforesaid;

NOW THEREFORE,
BE IT ENACTED BY THE LEGISLATURE OF LOUISIANA:

Section 1. The Sub-part C of Chapter 1 of Title 17 of the Louisiana Revised Statutes of 1950, Sections 121 through 128, as amended, is hereby amended and re-enacted to read as follows:

§ 121: Election of members; qualifications; compensation; vacancies; interim members

There is hereby created a school board for the Parish of Orleans, to be known and designated "Orleans Parish School Board," to consist of five members, to be elected at large from the Parish of Orleans at the congressional election in said Parish in accordance with law. The members to serve in the interim from the time this Act takes effect until the next congressional election in the Parish of Orleans are hereby named, constituted, designated and appointed as follows:

Emile A. Wagner, Jr., of the Parish of Orleans
Robert L. Hickerson, of the Parish of Orleans
F. Otway Denny, of the Parish of Orleans
John Singreen, of the Parish of Orleans
Edward J. Peneda, of the Parish of Orleans

No commissions shall be required or necessary for the persons above named and this Act shall be sufficient to evidence the rights of said persons to said offices, but each such person shall subscribe to the oath provided by law and the filing of such oath shall constitute possession of the office to which each of said persons is herein appointed.

Beginning with the next congressional election in the Parish of Orleans, the members of the Orleans Parish School Board shall be elected as provided in the primary and general election laws for other parish school boards. The first members elected shall draw lots for two terms of two years, two terms of four years, and one term of six years, and their successors shall be elected for terms of six years.

The members of the Orleans Parish School Board shall have the same qualifications as those in the other parishes of the state. The members of the said Board shall serve without pay, and the Board shall meet monthly and at such called meetings as the president may require.

All vacancies in the membership of the Board caused by death, resignation, or otherwise, shall be filled by appointment by the Governor.

The Orleans Parish School Board herein created shall be the successor in law of the Orleans Parish School Board abolished on November 8, 1960. It is constituted a body corporate with the power to sue and be sued under the name and style Orleans Parish School Board. Citation shall be served on the president of the Board and in his absence on the vice-president.

§ 122. Application of general laws and regulations of state board of education

All laws, and all rules and regulations of the state board of education governing other parish school boards throughout the state, shall govern the Orleans Parish School Board, except as otherwise specifically provided in this Title.

§ 123. Superintendent of schools as treasurer of board; bond

The superintendent of public schools of the Parish of Orleans shall be ex-officio the treasurer of the Orleans Parish School Board and shall receive all funds apportioned by the state to the City of New Orleans or received or collect-

ed for the support of the free public schools from any and all sources. He shall give bond, with security in the sum of Fifty Thousand Dollars ($50,000.00) in favor of the board and its successors in office, to be accepted and approved by the board and recorded in the mortgage office of the parish, which bond shall then be filed and kept on record in the office of the board. The filing of the bond and the taking and filing the usual oath of office before any officer authorized to administer the same, shall qualify the treasurer to act. The board shall designate the officers or persons who shall sign checks or warrants drawn against the school funds. All persons so authorized shall furnish a surety bond of not less than Fifty Thousand Dollars ($50,000.00), for the faithful performance of their duites.

§ 124. Appropriations, authority to make

The Orleans Parish School Board may make annual appropriations out of any of its funds to the teachers' retirement fund of the public schools of the parish; these appropriations shall not be less than Thirty Thousand Dollars ($30,000.00) each year. The board may make additional appropriations to be used as a special fund for such aged and infirm teachers as are, under the laws in effect on July 26, 1922, receiving less than Twenty-Five Dollars ($25.00) a month.

§ 125. Normal schools; authority to maintain; salary schedules

The Orleans Parish School Board may maintain one or more normal schools for the professional training of teachers. The course of study pursued in such schools must be

approved by the state board of education. All graduates of these normal schools shall be awarded diplomas. The normal schools in existence on July 29, 1942, under the authority of this Section, may award the degree of bachelor of arts and bachelor of science to graduates who complete four-year courses approved by the state board of education. Wherever the Orleans Parish School Board fixes salary schedules to distinguish between teachers employed on July 29, 1942, who have certificates based on degrees from recognized colleges or universities and certificates issued by the state board on the basis of a two years normal course, or on other qualifications accepted by the state board of education, and in which cases the teachers are on the same level of experience, the Orleans Parish School Board shall in no instance pay to the teacher holding the certificate based on the two years normal course, or on other qualifications accepted by the state board of education, a salary which shall be less than that paid to the holder of the certificate based on a college degree by an amount exceeding Fifteen Dollars ($15.00) per month, or One Hundred Fifty Dollars ($150.00) per annum.

§ 126. Courses of study and text books; authority to adopt

The Orleans Parish School Board has authority to prepare courses of study for use in public schools of Orleans Parish, subject to the approval of the state board of education, and to adopt text books for use in te public schools of Orleans Parish, subject to the approval of the state board of education.

§ 127. Revenues of parish school boards; duty to secure

The Orleans Parish School Board or its successor in law, shall secure its revenues as provided in the Constitution of the state.

§ 128. Contracts; bids

When required so to do by existing state law, all contracts for public works or for materials and supplies ordered by the Orleans Parish School Board shall be advertised by the board in accordance therewith. The board shall have the right to appoint, by proper resolution, a committee consisting of three or more of its employees to publicly open all bids at the time and place specified in the advertisement, outside of the presence of the board. The said committee shall tabulate all bids so received, and furnish the board with said written tabulation. The board shall then let the contract, or reject all bids, within the time specified in the advertisement.

Section 2. That the suspension of Part II of Title 17 of the Louisiana Revised Statutes of 1950, Sections 51 through 127, effected by House Concurrent Resolutions Numbered 10 and 17 and Act 17 of the First Extraordinary Session of the Louisiana Legislature of 1960, be and said suspension, or suspensions, is hereby revoked, terminated and repealed.

Section 3. That all laws or parts of laws in conflict with this Act be and the same are hereby repealed.

Act 2 of the Second Extraordinary Session of the Louisiana Legislature of 1960 is hereby repealed.

Section 4. The necessity for the immediate passage of this Act having been certified by the Governor to the Legislature while in session, in accordance with Section 27 of Article III of the Constitution of Louisiana, this Act shall become effective immediately upon approval by the Governor.

Signature not legible
Speaker of the House of Representatives

C. C. AYCOCK
Lieutenant Governor and President of the Senate

JIMMIE H. DAVIS
Governor of the State of Louisiana

APPROVED: January 12, 1961 at 3:55 P.M.

APPROPRIATIONS

Sec. 106. There is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, so much as may be necessary to carry out the provisions of this Act.

PART II

To Provide For An Additional Assistant Attorney General

Sec. 111. There shall be in the Department of Justice one additional Assistant Attorney General, who shall be appointed by the President, by and with the advice and consent of the Senate, who shall assist the Attorney General in the performance of his duties, and who shall receive compensation at the rate prescribed by law for other Assistant Attorneys General.

PART III

To Strengthen The Civil Rights Statutes, And For Other Purposes

Sec. 121. Section 1980 of the Revised Statutes (42 U. S. C. 1985) is amended by adding thereto two paragraphs to be designated "Fourth" and "Fifth" and to read as follows:

"Fourth. Whenever any persons have engaged or there are reasonable grounds to believe that any persons are about to engage in any acts or practices which would give rise to a

partisan politics. This problem is not a partisan one. It is a constitutional problem.

It is not necessary, it seems to me, to charge that the Attorney General of the United States seeks to become a 20th century American Caesar, when he is merely seeking to implement the 14th and 15th amendment to the Constitution of the United States. Nor is it necessary to imply that the President would be guided by political motivations, rather than by his high oath of office.

On July 16, the President of the United States said that this proposed legislation, as he understood it —

Seeks to accomplish these four simple objectives:

1. To protect the constitutional right of all citizens to vote regardless of race or color. In this connection we seek to uphold the traditional authority of the Federal courts to enforce their orders. This means that a jury trial should not be interposed in contempt of court cases growing out of violations of such orders.

2. To provide a reasonable program of assistance in efforts to protect other constitutional rights of our citizens.

3. To establish a bipartisan Presidential commission to study and recommend any further appropriate steps to protect these constitutional rights.

4. To authorize an additional Assistant Attorney General to administer the legal responsibilities of the Federal Government involving civil rights.

Certainly, it is not necessary to undermine confidence in the Supreme Court of the United States, in order to build up confidence in the Congress of the United States. Each has its place in our Federal structure. Each has contributed throughout our history to our way of life. And at various times each has reached heights of public approval or periods of public criticism.

If the Supreme Court is not to interpret the Constitution and the effect of statutes upon fundamental constitutional rights, what agency is to do it?

In Britain, there is no written constitution, and there the Parliament can, in effect, amend constitutional rights at will. No such power exists, or should exist, in our legislative arm of the Government.

By the same token, the Court should avoid the tendency, if one indeed exists, to write judicial legislation. The legislative power, all of it, is in the Congress.

I am deeply troubled lest the interpretation may be placed on this motion to strike the core of part III as a decision by the Senate to subordinate the 14th amendment or to lessen its effectiveness.

We must never weaken, nor abandon, the position of America in the eyes of our own people or of the world that the American Constitution contains guaranties to all our citizens, not merely some of them, in all areas of our Nation — North, South, East, and West.

Mr. President, at this point in my remarks I wish to read into the RECORD the 14th amendment to the Constitution, or at least a part of it. This is what it says:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 5 of the 14th amendment reads:

The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

The 15th amendment is short, and reads as follows:

Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Sec. 2. The Congress shall have power to enforce this article by appropriate legislation.

Those who have the power to strike from the bill section 121 or other sections have a heavy responsibility. All areas of the Nation have an obligation to demonstrate that the letter and the spirit of the 14th and 15th amendments are implemented, are effective, and are enforced.

I shall vote against the pending Anderson-Aiken amendment, which completely strikes section 121 from the bill.

Mr. JOHNSON of Texas. Mr. President —

Mr. ANDERSON. Mr. President, I yield the time remaining to me on the amendment to the able majority leader.

The PRESIDING OFFICER. The Senator from Texas has 5 minutes.

Mr. JOHNSON of Texas. Mr. President, this is one of the most basic decisions we shall make on the entire civil-rights bill. Under the agreement which the Senate entered into on yesterday, in a matter of minutes, we will be called upon to cast our vote on part III.

Mr. President, that vote may very well be the deciding factor on whether this Congress will pass any civil-rights bill at all.

I desire to express my appreciation and pay my tribute to the Members of the Senate on both sides of the aisle for the manner in which they have conducted the debate during the past 2 weeks. I think the Senate has operated in its finest great traditions.

The issue before the Senate today is simple. We can write an adequate bill to safeguard the right of all citizens to vote. We can create a Commission which can study the overall problems, and submit to the Congress its recommendations.

Or we can attempt here, on the floor of the Senate, to write into law new and drastic and far-reaching enforcement procedures to cover a wide variety of vaguely defined so-called civil rights.

Mr. President, so far as I am concerned, I am ready and willing to vote for and support an adequate right-to-vote bill, with proper safeguards.

I am ready and willing to support a commission which will make reasoned, studied, fair, impartial and thorough inquiries into this most serious problem.

Mr. President, I believe we can, here in the Senate, work out a measure which will be accepted by the people of the country, provided we do not clutter up the bill with other issues.

The right to vote is the basic right, without which all others are meaningless. It gives people — people as individuals — control over their own destinies.

Mr. President, the vote on part III is of crucial importance. It can well make the difference between achievement and futility. I do not share the views expressed by the earnest and able minority leader, who has worked long and eagerly but unsuccessfully to devise some substitute language, that those who oppose the bill have the responsibility of devising alternatives.

Mr. President, the Attorney General, in making his recommendations in April, 1956, said then to the Congress that part III should and could and ought to be studied by a com-

mission, and then the commission could make its recommendations.

The PRESIDING OFFICER. The Senator has used his time.

Mr. JOHNSON of Texas. Mr. President, I hope the Senate in its wisdom today will strike from this measure part III, which never should have been in it.

Mr. KNOWLAND. Mr. President, I yield back all the time remaining to me.

Mr. JOHNSON of Texas. Mr. President, I suggest the absence of a quorum.

Mr. BRICKER. Mr. President, will the Senator yield, so that I may ask unanimous consent to have printed at this point in the RECORD a statement I have prepared on the amendment?

Mr. JOHNSON of Texas. I yield for that purpose.

The PRESIDING OFFICER. Is there objection?

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

Statement by Senator Bricker on the Anderson-Aiken-Case of South Dakota Amendment to the Civil Rights Bill.

I shall vote for the Anderson-Aiken amendment to strike part III from the pending civil rights bill.

As a practical matter, no civil rights bill containing part III or similar language can be passed by this Congress. We can have legislation more adequately protecting the right to vote, or we can have no civil rights legislation at all.

Therefore, I shall vote for part IV of the bill, protecting the right to vote, and for part II, providing for an additional Assistant Attorney General to direct prosecutions of those who unlawfully interfere with the right to vote. By assuring every individual the right to vote we give him power to vindicate through the ballot box many other constitutional rights to which he is entitled. This form of political self-help will safe-guard the fundamental human rights of all our citizens far more effectively than punitive Federal intervention in local cases and controversies.

I shall also vote for part I of the bill. It may well be that basic civil rights, in addition to the right to vote, should

be protected by the enactment of new laws, although, as a matter of principle, I cannot vote for part III as written. After the Commission on Civil Rights has completed its study, we will be in a better position to decide what type of civil rights legislation is necessary or desirable.

I hope I shall never again see an Attorney General of the United States request power so unlimited in scope as that which resides in part III of the pending bill. In a few superficially innocuous sentences, there is power given to dictate conformity on a wide range of social and cultural matters; to invade powers reserved to the States and to the people by the 10th amendment; and which, in my judgment, is clearly unconstitutional.

In conclusion, I hope that no further civil rights legislation will be keyed to archaic legislation of the Reconstruction era. Some of this legislation is of doubtful constitutionality. Because these old statutes have long been dormant, their meaning is unclear. We shall never advance basic civil rights by allowing the Attorney General to initiate star chamber proceedings to enforce laws that are unknown and unknowable.

Mr. JOHNSON of Texas. Mr. President, on the question of agreeing to the pending amendment, I ask yeas and nays.

The yeas and nays were ordered.

Mr. JOHNSON of Texas. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The Clerk will call the roll.

The Chief Clerk called the roll, and the following Senators answered to their names:

Aiken	Ervin
Allott	Flanders
Anderson	Frear
Barrett	Fulbright
Beall	Goldwater
Bennett	Gore
Bible	Green
Bricker	Hayden
Bush	Hickenlooper
Butler	Hill
Byrd	Holland
Capehart	Hruska
Carlson	Humphrey
Carroll	Ives
Case, N. J.	Jackson
Case, S. Dak.	Javits
Chavez	Jenner
Church	Johnson, Tex.
Clark	Johnston, S. C.
Cooper	Kefauver
Cotton	Kennedy
Curtis	Kerr
Dirksen	Knowland
Douglas	Kuchel
Dworshak	Langer
Eastland	Lausche
Ellender	Long

Magnuson	Robertson
Malone	Russell
Mansfield	Saltonstall
Martin, Iowa	Scott
Martin, Pa.	Smathers
McClellan	Smith, Maine
McNamara	Smith, N. J.
Monroney	Sparkman
Morse	Stennis
Morton	Symington
Mundt	Talmadge
Murray	Thurmond
Neuberger	Thye
O'Mahoney	Watkins
Pastore	Wiley
Potter	Williams
Purtell	Yarborough
Revercomb	Young

The PRESIDING OFFICER. A quorum is present.

The question is on agreeing to the Anderson-Aiken-Case of South Dakota amendment to strike out section 121 of the bill. All time for debate on the amendment has been exhausted. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. MANSFIELD. I announce that the Senator from Missouri [Mr. Hennings] is absent by leave of the Senate because of illness.

The Senator from West Virginia [Mr. Neely] is absent on official business.

I further announce that if present and voting, the Senator from Missouri [Mr. Hennings] and the Senator from West Virginia [Mr. Neely] would each vote "nay."

Mr. DIRKSEN. I announce that the Senator from New Hampshire [Mr. Bridges], the Senator from Maine [Mr. Payne] and the Senator from Kansas [Mr. Schoeppel] are absent because of illness.

If present and voting, the Senator from Maine [Mr. Payne] would vote "nay."

If present and voting the Senator from Kansas [Mr. Schoeppel] would vote "yea."

The result was announced — yeas 52, nays 38, as follows:

YEAS — 52

Aiken	Church
Anderson	Cotton
Barrett	Curtis
Bennett	Dworshak
Bible	Eastland
Bricker	Ellender
Butler	Ervin
Byrd	Flanders
Case, S. Dak.	Frear
Chavez	Fulbright

Goldwater
Gore
Green
Hayden
Hickenlooper
Hill
Holland
Johnson, Tex.
Johnston, S. C.
Kefauver
Kerr
Long
Malone
Mansfield
McClellan
Monroney
Mundt
Murray
O'Mahoney
Robertson
Russell
Saltonstall
Scott
Smathers
Smith, N. J.
Sparkman
Stennis
Talmadge
Thurmond
Williams
Yarborough
Young

NAYS — 38

Allott
Beall
Bush
Capehart
Carlson
Carroll
Case, N. J.
Clark
Cooper
Dirksen
Douglas
Hruska
Humphrey
Ives
Jackson
Javits
Jenner
Kennedy
Knowland
Kuchel
Langer
Lausche
Magnuson
Martin, Iowa
Martin, Pa.
McNamara

cause of action pursuant to paragraphs First, Second, or Third, the Attorney General may institute for the United States, or in the name of the United States, a civil action or other proper proceeding for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order. In any proceeding hereunder the United States shall be liable for costs the same as a private person.

"Fifth. The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this section and shall exercise the same without regard to whether the party aggrieved shall have exhausted any administrative or other remedies that may be provided by law."

Sec. 122. Section 1343 of title 28, United States Code, is amended as follows:

(a) Amend the catch line of said section to read, "§ 1343. Civil rights and elective franchise"

(b) Delete the period at the end of paragraph (3) and insert in lieu thereof a semicolon.

(c) Add a paragraph as follows:

"(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote."

order to make effective another part. Where unneeded power was proposed in the bill, we have sought to remedy the situation — as has been done in the case of the use of the armed power of the Federal Government.

A public policy question has been raised regarding the wisdom of employing volunteers — who might be prejudiced — to work for the commission, which should be unprejudiced, and we are prepared to join with other Senators in correcting that provision.

We only regret that some of our colleagues in the opposition have not used their great talents to help devise acceptable language which would, within our constitutional legislative power, help to implement the 14th and 15th amendments to the Constitution. If the energy which has been devoted to outright opposition had been used in an effort to find an acceptable alternative, constructive results might have been achieved.

It is not necessary, I believe, to charge —

Mr. JOHNSON of Texas. Mr. President, at this point will the Senator from California yield to me?

Mr. KNOWLAND. At this time I am not able to yield.

Mr. President, it is not necessary, in my opinion, to charge that the legislative opponents of the bill are motivated by

I think it would be advisable to consider that amendment now. On page 2, line 3, the word "President" is misspelled; on page 11, line 3, the word "three" should be stricken out, and "four" inserted; and on page 12, line 10, it is proposed to strike out *"Provided,* That any" and insert "Any."

I therefore ask unanimous consent that the pending amendment of the Senator from Wyoming be temporarily laid aside, and that the Senate proceed to consider the amendment of the Senator from South Dakota, designated "7-16-57-D", with the understanding that as soon as action is completed thereon, the Senate will return to the pending amendment.

The VICE PRESIDENT. Is there objection to the unanimous consent request of the Senator from Texas? The Chair hears none, and it is so ordered.

The amendment of the Senator from South Dakota will be stated.

The LEGISLATIVE CLERK. On page 2, line 3, it is proposed to strike out "Preident" and insert "President."

On page 11, line 3, strike out "three" and insert "four."

On page 12, line 10, strike out *"Provided,* That any" and insert "Any."

Mr. CASE of South Dakota. Mr. President, these corrections are either typographical or clerical. The first one is purely a typographical correction, in that the word "President" is misspelled.